

LAW'S
FINEST

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*Indian to
hold PhD from
China*

**ADR Academic of the Year
in the Australian ADR
Awards 2022**

Feature on:

DR. RAJESH SHARMA

*Senior lecturer, justice and legal studies,
RMIT University, Melbourne, Australia*

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LAW'S FINEST

Law's Finest is an initiative developed by Maldives Moot Court Society (MMCS) that features exclusive interviews with the most prominent and accomplished legal professionals in the industry.

We aim to create a space for legal professionals to share their experiences, and insights to foster a well-informed and engaged legal community while inspiring and empowering.

Join us as we explore the diverse and fascinating world of law, one interview at a time. Let's hear from the Law's Finest and discover what it takes to become one.

Suma Ilyas, Founder & President

BIOGRAPHY

DR. RAJESH SHARMA

Dr. Rajesh Sharma is currently teaching at RMIT University, Melbourne, Australia. Before coming to Australia, he was an Assistant Professor at School of Law, City University of Hong Kong.

Dr. Sharma has given training and taught courses on arbitration, mediation, negotiation, foreign investment arbitration, WTO Law, international trade, banking law, foreign investment in Hong Kong, Macao, India, Australia, China, Myanmar, Thailand, Vietnam, Indonesia, Malaysia, Singapore, Papua New Guinea, Nepal and Africa (where he is associated with the African Centre for Legal Excellence in Uganda). He has served as the Legal Advisor to the Macau University of Science and Technology. He has advised transnational companies on trade and investment policy in China and has done training courses with and for the WTO and UNITAR. Dr. Sharma is the winner for the ADR Academic Award 2022 in Australia.

Dr. Sharma is the first Indian to hold PhD in Law from China. He holds PhD from the Chinese University of Political Science and Law, Beijing, a Master of Business Law from Monash University, Australia, an M.Phil from City University of Hong Kong and the Bachelor of Laws from the University of Delhi. He has received training for arbitrators from the World Intellectual Property Organization (WIPO), Geneva; and International Chamber of Commerce and Chartered Institute of Arbitrators. Dr. Sharma has received training of a mediator for community conflict resolution by the Plowshares Institute, USA and the Accord Group of Australia. He has also obtained professional training in negotiation at Harvard Law School. He has received training for teachers of WTO organized by UNU-IAS.

Dr. Sharma has researched extensively on the arbitration laws of China and India and other Asian countries, Investment Arbitration, Dispute Settlement in FTAs, WTO related issues, investment law and mediation. He has publications in the areas of WTO law, international trade, arbitration and dispute resolution, commercial law, and banking law. He has published a book with Wolters Kluwer titled “Dispute Settlement Mechanism in the FTAs of Asia”.

Dr. Sharma has also conducted research and provided expert comments to UNCITRAL on mediation and conciliation. These works include conducting “An Evaluation of Mediation Law in Asia”, provided expert comments on “Draft Instrument on Enforcement of Settlement Agreement Across-boarder” and reported on “Possible Amendments in UNCITRAL Model Law on International Commercial Conciliations”. Currently, Dr. Sharma is working on the preparation of commentary on the Singapore Convention.

At CityU, Dr. Sharma was the Director of Mooting and coach of VIS Arbitration Moot at CityU. The team coached by Dr. Sharma has won the VIS (East) and VIS (Vienna) Championship in 2012 and 2013 respectively. He also designed the International ADR Moot Competition which is unique in the world because it combines arbitration and mediation where a student also takes part in as a mediator. Since 2016, Dr. Sharma is serving as a member of the Steering Committee for the ICC-Asia-Pacific Mediation Competition in Melbourne, Australia.

Dr. Sharma is the Director at the Asia Pacific Centre of Arbitration and Mediation; a Council Member and the Chairman of the Intellectual Property Dispute Group of the Hong Kong Centre of Arbitration, a member of the Governing Board of Indian Institute of Arbitration and Mediation, India; Associate Director of the Hong Kong WTO Research Institute, a member of Asian WTO Research Network; a panel arbitrator of Korean Commercial Arbitration Board (KCAB), Fellow member of the Chartered Institute of Arbitrators; an Arbitration Fellow at International Dispute Resolution and Risk Management Institute, a panel arbitrator at Indian Institutes of Arbitrators; Chairman, Accreditation and Disciplinary Committee of Asia Pacific Centre of Arbitration and Mediation; a panel arbitrator at Hangzhou Arbitration Commission; a member and secretary of Hong Kong Basic Law Education Association, a member of the Centre for Global Studies and a Researcher at China-Latin America Legal Research Centre, Shanghai. Dr. Sharma is a Research Fellow of the International Academy of Belt and Road, a member of the Drafting Committee of the Dispute Resolution Rules for the Belt and Road, a member of the Working Group for the establishment of Asian Regional Mediation Organization (ARMO) and a member of the Drafting Committee for the Rules of Mediation for ARMO and a lead drafter of the Arbitration Rules of Asia Pacific Centre for Arbitration and Mediation (APCAM). Dr. Sharma is currently engaged as a member of the Rules Drafting Group of International Commercial Dispute Prevention And Settlement Organization (ICDPASO) in drafting Mediation Rules, Arbitration Rules, Investment Arbitration Rules and Appeal Rules. He is a core member (representing Australia) on the Committee for the Establishment of the Centre of Excellence for Dispute Resolution for Indian Ocean Regional Association. Dr. Sharma has been appointed as the International Expert Mediator at the Hong Kong-Mainland Joint Mediation Centre and Japan International Mediation Centre-Kyoto and Korea International Mediation Centre. Dr. Sharma is a Member of the ISDS Academic Forum and an elected Associate Member of Academy of Comparative Law.

INTERVIEW

What inspired you to pursue a career in teaching law, and what have been some of the highlights of your career so far?

People say lawyers use their mind and not their heart. But for me, it was different. I always listen to my heart. Somewhere in the corner of my heart, a voice came that guided me to become a teacher rather than go into practice. Even when I was in middle school, my teacher used to send me to lower classes whenever a teacher was not available, and I noticed that I could explain concepts to students well. They also gave me positive feedback, which inspired me. When I came to Hong Kong to do my further studies, I took some tutorials and lectures, and I found that I could teach students from different cultural backgrounds. At that moment, I became fully convinced that I should continue in the teaching line. As a lawyer, I could have earned more, but when I get thank-you cards from students, positive nods from students, or mentions of what they learned from me, all those kind words and gestures are my treasure, and I value them very much.

"I always listen to my heart"

You have taught courses on arbitration, mediation, negotiation, foreign investment arbitration, WTO Law, international trade, and banking law in various countries. What are some of the challenges you face while teaching such diverse subjects?

At the start I was given subjects which I had to teach by default. I was fortunate that I was given subjects in which I was interested. You

may notice that the subjects that I taught have one common thread, i.e., commercial elements and not criminal elements. So it was not difficult to teach diverse courses with commercial elements. In the course of my research and preparation, I also read the judgments of famous judges, and I noticed that they could decide cases on different subjects with great ease. Then I thought, I should also be able to teach different subjects if I know the core concepts. In order to teach diverse subjects, I have to keep myself regularly updated on related topics. I have joined several case alert groups from around the world. These days, social and professional media are very helpful too. I have realized that my diverse knowledge helps me approach a problem from different perspectives rather than looking at it from one angle and missing its impact on several other aspects. In teaching, it helps me develop creative, critical, and analytical thinking in students.

You are the first Indian to hold a PhD in Law from China. How did this experience shape your approach to teaching and researching law?

I developed my interest in Chinese law when I was a law student in India. I used to read about China's economic modernization plan & implementation, the opening up of the Chinese market, and different rules and policies related to that. However, those sources of information were limited to newspapers or magazines. Then, in 1995, I got a research assistant job in Hong Kong. There, I was exposed more

to Chinese law. I got the opportunity to interact with experts in Chinese law. I was very fortunate to learn from Professor Wang Guiguo, who is one of the leading experts in Chinese law. When the Chinese University of Political Science and Law, Beijing, started a PhD program for foreigners in English, I grabbed the opportunity. My learning and experience in Chinese law help me present comparative views on different topics where I use examples from China. It also helps me to demonstrate the fine differences between civil and common law. I also use this knowledge to explain how, in some areas, civil law and common law concepts are converging, particularly in the trade, commerce, and economic law areas.

You have researched extensively on the arbitration laws of China and India and other Asian countries, Investment Arbitration, Dispute Settlement in FTAs, WTO related issues, investment law and mediation. Can you tell us about some of your most significant findings and how they have influenced your teaching and research?

When I was researching state-to-state dispute resolution mechanisms in the possible India-China FTAs, I found several striking features in the FTAs signed by India and China with their partners. You may note that India and China started discussing a possible FTA, but it has been stalled for a long time. But I was preparing a template for state-to-state dispute resolution. I looked at the approach of China and its trading partners as to how they have designed their dispute resolution mechanism. The same study was done for India and its trading partners. I found that there is consistent approach in negotiation of state-to-state. For example, at different stages of the dispute resolution mechanism, the same country has

agreed to different timelines with different countries. It shows countries do not have a consistent approach or that dispute settlement mechanisms are still negotiated or seen as an important part of negotiation as compared to tariffs, etc. I use this example in my teaching, training, and research to argue that there is a need to develop a good dispute settlement mechanism template that should be effective, efficient, and practical.

You are involved with several organizations, including the Asia Pacific Centre of Arbitration and Mediation, the Hong Kong Centre of Arbitration, the Indian Institute of Arbitration and Mediation, and the Chartered Institute of Arbitrators. Can you tell us about your role in these organizations and how they contribute to your teaching and research?

You may see that all these organizations are related to alternative dispute resolution. As a member or office bearer, I get the opportunity to interact with the best brains in the field. This gives me the opportunity to learn from them and get some creative ideas.

"As a member or office bearer, I get the opportunity to interact with the best brains in the field."

"We should also see things from people's perspectives"

You have advised transnational companies on trade and investment policy in China and have done training courses with and for the WTO and UNITAR. Can you share some insights into the current state of trade and investment policy in China and its impact on global trade?

Let me just explain it by discussing China's Belt and Road Initiatives in context. In every country's development, infrastructure such as roads, rail, bridges, power, etc. has a critical role to play. This point is easy to see. But we should also see things from people's perspectives. The benefits of roads, power, bridges, etc. affect the daily lives of local people. If students want to study at night, they need power. A good road will help people move and cross a river to go to another place easily and safely. Local governments may not have the resources to do that, so they have to rely on foreign investments. We talk about the right to development, but who should take responsibility for development if the local government cannot do that. I see the Belt and Road Initiatives from this perspective. China is helping develop those infrastructures. If a road is built, everybody can use it and get benefits. Now, by rail, big loads of goods are being exported from Asia to Europe. Roads are now connecting neighboring countries or even different locations within a country. All these are benefiting local people too.

You have conducted research and provided expert comments to UNCITRAL on mediation and conciliation. Can you tell us about your experience working with UNCITRAL and the importance of these topics in the context of international dispute resolution?

UNCITRAL provides an opportunity to learn about the design, drafting, and negotiation of rules. I had the opportunity to witness how those rules are made, which are then followed in different countries. I read about different conventions and model laws, but I also saw the signing of the Singapore Convention. I consider myself fortunate to have witnessed that historical moment. The Singapore Convention, which allows cross-border enforcement of settlements agreed upon through mediation, is a game changer. We will see mediation take center stage in dispute resolution processes in international trade, investment, and commerce. A student interested in alternative dispute resolution should learn more about the Singapore Convention. UNCITRAL has also started a free online module to understand the work of UNCITRAL in mediation and arbitration. I strongly encourage students to take those free modules.

What motivated the establishment of the Asia Pacific Vis Pre Moot, where you hold a position as a core organizing committee member?

Recently, I served on the ICC Taskforce on Disability Inclusion in International Commercial Arbitration. It was an eye-opener for me. I got to know the difficulties people with disabilities face in the real world, which compound when it comes to the legal or arbitration field. But we must realize that the brains of those people are as good as any other person's. I then argue that instead of waiting longer, why not start disability-inclusive actions from the beginning, meaning from the stage of teaching and training at law school, so that those people will be confident to enter the profession from the start. In order to try and test this approach, we started a pre-vis moot competition and gave them the chance to compete with other students at the same level. We also started giving training in mooting with the help of sign language or using technical tools. In the past two years, many students have taken advantage of this opportunity. I am glad and somewhat satisfied that students with disabilities can build their confidence by joining this moot competition, and I am sure that when they join the profession, they will be as comfortable and confident as anyone else. I have adopted the ICC Taskforce recommendations in my teaching. I have also advocated for adopting the same approach in the field of mediation, including teaching and training.

In your experience coaching a championship-winning team at Willem C. Vis International Commercial Arbitration Moot in 2013 and Willem C. Vis (East) International Commercial Arbitration Moot in 2012, how do you think participating in moots prepare law students for the demanding professional life as a legal practitioner?

Moot is my passion. I strongly believe that every law student should do moots, and without that experience, legal education is not complete. Moot also teaches students about writing technique, research skills, and oral presentation skills within a tight time frame, including question and answer technique. Moot also prepares students for creative and critical thinking, analytical abilities, and problem-solving skills. These techniques are important for the legal profession. Mooting also prepares students to discover their potential. If a student finds comfort in writing and research, they can focus on in-house work as compared to those who find themselves confident in speaking and aim to appear before a court. All those students who were coached by me and have done mooting are all doing very well in their professional lives. At least they were confident from the start.

"Every law student should do moots, and without that experience, legal education is not complete."

"I consider my students my source of inspiration"

How did you seek guidance and motivation throughout your career? Did you have a mentor or other sources of influence that supported your professional growth?

I consider my students my source of inspiration. Even after 25 years of teaching, I still take every class as a challenge. Every year and every group of students are different, so I try to readjust according to their responses. To prepare students for the future is my motivation. I know students do not know what they need in the future, but I, as a teacher, and with my experience, can guide them and prepare for the future. My involvement in different professional organizations helps me in this regard. To prepare competent, confident, knowledgeable, and skillful students for the future is my aim, and this motivates me every day I get up and enter my classes.

Lastly, what advice would you give to law students aspiring to build a career in ADR?

In short, I can say make "ADR a Passion, Not a Fashion". You need to first believe in it and not just take it as a stage of dispute resolution or a box to tick. Just because ADR is talked about now, many people are engaging in or pursuing it to get a certificate and show it on social media. I recommend that you first learn about ADR skills, then use and practice them. Think from the heart, so see if you are fit for that. For example, a mediator has to listen to others problems and difficult situations throughout the process; if that person is not interested, good at listening skills, or has patience, they may not be suitable for mediation. There is nothing wrong if they find it not to their liking and leave rather than continue just because it is now widely talked about or everyone is doing it. Once you find your passion for ADR, everything will fall into place.

"Make ADR a Passion, not a Fashion"

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